

AMENDING SECTION 5(10) OF THE INTERSTATE COMMERCE ACT REGARDING MOTOR CARRIER MERGERS

JULY 13 (legislative day, JULY 12), 1965.—Ordered to be printed

Mr. LAUSCHE, from the Committee on Commerce, submitted the following

REPORT

[To accompany H.R. 5242]

The Committee on Commerce to whom was referred the bill H.R. 5242, to amend paragraph (10) of section 5 of the Interstate Commerce Act so as to change the basis for determining whether a proposed unification or acquisition of control comes within the exemption provided for by such paragraph, having considered the same, report favorably thereon without amendment, and recommend that the bill do pass.

SUMMARY OF PROPOSED LEGISLATION

This bill, H.R. 5242, would amend section 5(10) of the Interstate Commerce Act so as to make gross operating revenues, instead of the number of vehicles owned or operated, the basis for determining whether a proposed unification or acquisition of control is exempt from the provisions of section 5.

NEED FOR LEGISLATION

The unification of small trucking companies is exempted by paragraph (10) of section 5 from the formalized hearing procedures under section 5, and subjected instead to the simpler procedures of section 212(b) of the Interstate Commerce Act. The purpose of the legislation is to provide a more reliable criterion for determining whether the trucking operations seeking to merge come within the exemption of section 5(10).

The present test is whether or not the aggregate number of vehicles owned, leased, controlled, or operated by the combined trucking companies, for purposes of transportation subject to part II of the act, exceed 20. The Commission has advised the committee

that in applying this test, numerous questions have arisen as to whether certain vehicles should or should not be included. Under the proposed legislation, the test would be changed to whether or not the gross operating revenues of the combined trucking companies exceed \$300,000. The Commission indicated that the proposed \$300,000 restriction of the exemption corresponds roughly to the present scope of the 20-vehicle limit, and would be a simpler and more definite test to apply.

Hearings on this measure were conducted by the Surface Transportation Subcommittee starting on May 10, 1965. The Interstate Commerce Commission and the Department of Commerce testified in favor of the measure. The measure was also supported by the American Trucking Associations. No one appeared in opposition to the proposed legislation.

COST

The enactment of this bill will result in no increased Federal expenditures.

AGENCY COMMENTS

This bill was recommended by the Interstate Commerce Commission in its last annual report to the Congress. The Commission's justification for this measure is included in this report. The General Counsel of the Department of Commerce submitted a statement favoring enactment. The Comptroller General advised that he had no objection to its favorable consideration. The Department of Justice indicated that this matter does not directly affect the activities of the Department, and withheld comment concerning the bill. The text of these agency statements and comments, most of which are addressed to S. 1147, an identical Senate bill, follows:

INTERSTATE COMMERCE COMMISSION RECOMMENDATION NO. 9

This proposed bill would give effect to legislative recommendation No. 9 of the Interstate Commerce Commission as set forth on page 65 of its 78th annual report as follows:

"We recommend that section 5(10) be amended so as to make gross operating revenue, instead of the number of vehicles owned or operated, the basis for determining whether a proposed unification or acquisition of control is exempt from the provisions of section 5."

JUSTIFICATION

The attached draft bill would provide a more reliable criterion for determining whether a proposed unification or acquisition of control involving only motor carriers comes within the exemption of subsection (10) of section 5 of the Interstate Commerce Act.

One of the tests for determining whether a proposed transaction is exempt from the requirements of section 5 is whether or not the aggregate number of motor vehicles owned, leased, controlled, or operated by the parties, for purposes of transportation subject to part II of the act

exceeds 20. In applying this test, numerous questions have arisen as to whether certain vehicles should or should not be included, as, for example, (a) those used in intrastate commerce, exempt transportation, or private carriage, but which are available or suitable for regulated interstate service, (b) equipment of noncarrier affiliates, (c) vehicles leased for short periods, (d) disabled vehicles, and (e) combinations of vehicles. The amount of time and effort expended in establishing the number of vehicles on which jurisdiction depends, has, where the question is close, proved to be disproportionate to the benefits intended by the exemption. Moreover, in many instances, it has been virtually impossible to check whether the exemption was, in fact, applicable to transactions purportedly consummated thereunder.

The proposed amendment would substitute a more definite and practical basis for the exemption. Gross operating revenues are, in most cases, readily ascertainable from the annual reports which, with certain exceptions, are required of all for-hire carriers, and the quarterly reports required of such carriers with average gross revenues of \$200,000 or more. On the basis of a limited study, it appears that the proposed \$300,000 restriction on the exemption corresponds roughly to the present scope of the exemption in paragraph (10).

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., April 26, 1965.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department with respect to S. 1147, a bill to amend paragraph (10) of section 5 of the Interstate Commerce Act so as to change the basis for determining whether a proposed unification or acquisition of control comes within the exemption provided for by such paragraph.

S. 1147 would amend part I, section 5(10) to change the criteria for carriers which would not be subject to the prior approval of the Interstate Commerce Commission before a combination or consolidation can be effected. The present law excepts carriers "where the aggregate number of motor vehicles owned, leased, controlled, or operated by such parties, for purposes of transportation subject to part II, does not exceed 20." S. 1147 would substitute instead of the latter phrase pertaining to 20 vehicles, the test of operating revenue as follows: "where the aggregate gross operating revenues of such carriers have not exceeded \$300,000 for a period of 12 consecutive months ending not more than 6 months preceding the date of the agreement of the parties covering the transaction."

The subject bill is the result of recommendations of the Interstate Commerce Commission in each annual report of the Commission since 1957.

The Commission's reason for recommending the change of criteria is that the present test is a difficult one to apply. It states:

"This test has been difficult to apply, and the time and effort spent in establishing the number of vehicles on which jurisdiction depends

has, where the question is close, proved to be disproportionate to benefit intended by the exemption. This test has also presented numerous possibilities of evasion. Gross operating revenues, which are readily ascertainable, would provide a more reliable criterion."

For the above reason, the Department of Commerce would favor the enactment of S. 1147.

We have been advised by the Bureau of the Budget that there would be no objection to submission of this report from the standpoint of the administration's program.

Sincerely yours,

ROBERT E. GILES.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 8, 1965.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: We refer to your letter of February 18, 1965, in which you request our comments on S. 1147.

This bill, which you introduced at the request of the Interstate Commerce Commission, would substituted a gross operating revenue basis for one involving the aggregate number of vehicles owned as the test for determining whether proposed unifications, mergers, or consolidation of motor carriers, subject to part II of the Interstate Commerce Act, are within the exemption in section 5(10) of the Interstate Commerce Act, 49 U.S.C. 5(10). The bill implements legislative recommendation No. 9, contained in the Interstate Commerce Commission's 78th annual report, page 65, and is similar to S. 674, 88th Congress, and S. 1285, 87th Congress.

S. 1147 would not affect the functions and operations of the General Accounting Office, nor do we have any special knowledge of the need for this proposed legislation. If enacted, the bill would not seem to adversely affect the interests of the United States as a shipper and we, therefore, have no objection to its favorable consideration by your committee.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., June 1, 1965.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 1147, a bill to amend paragraph (10) of section 5 of the Interstate Commerce Act so as to change the basis for determining whether a proposed unification or acquisition of control comes within the exemption provided for by such paragraph.

This bill has been examined, but since its subject matter does not directly affect the activities of the Department of Justice we would prefer not to offer any comment concerning it.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

(10) Nothing in this section shall be construed to require the approval or authorization of the Commission in the case of a transaction within the scope of paragraph (2) where the only parties to the transaction are motor carriers subject to part II (but not including a motor carrier controlled by or affiliated with a carrier as defined in section 1(3)), and where the aggregate [number of motor vehicles owned, leased controlled, or operated by such parties, for purposes of transportation subject to part II, does not exceed twenty] *gross operating revenues of such carriers have not exceeded \$300,000 for a period of twelve consecutive months ending not more than six months preceding the date of the agreement of the parties covering the transaction.*

Nothing in this section shall be construed to require the approval or authorization of the Commission in the case of a transaction within the scope of paragraph (2) where the only parties to the transaction are street, suburban, or interurban electric railways none of which is controlled by or under common control with any carrier which is operated as part of a general steam railroad system of transportation.





